



## Department of Energy

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December 20, 2002

Mr. Ronald Kreizenbeck  
Deputy Regional Administrator  
U.S. Environmental Protection Agency  
Region 10, ECL-117  
1200 Sixth Street  
Seattle, WA 98101

**SUBJECT:** Response to Potential Administrative Violations and Areas of Concern, Letter  
Dated December 4, 2002 – (EM-ER-02-211)

Dear Mr. Kreizenbeck:

On December 9, 2002, the U. S. Department of Energy (DOE) received a letter from you detailing an alleged violation of the Federal Facility Agreement and Consent Order (FFA/CO) and further describing two "potential administrative violations" and four "areas of concern." These observations are the result of a joint U. S. Environmental Protection Agency (EPA) and Idaho Department of Environmental Quality (IDEQ) inspection of implementation of the FFA/CO at the Idaho National Engineering and Environmental Laboratory (INEEL), which occurred the week of January 28, 2002. The purpose of this letter is to provide the requested clarifications and responses to Section II, *Potential Administrative Violations and the Areas of Concern*, identified by your notice. DOE concurs with your determinations regarding the Operable Unit 4-12 records, but disagrees with the remaining findings from the Potential Administrative Violations and Areas of Concern. In a separate letter, we are transmitting a Statement of Dispute, pursuant to Section IX. of the FFA/CO, regarding Section I. of your notice, which describes the alleged violation.

### Responses to Potential Administrative Violations:

The first "potential administrative violation" is described as follows:

*OU 3-13: The September 2000 Waste Management Plan requires labeling of all remedial waste containers in storage in the Staging and Storage Annex (SSA). This Plan derives from ARARs identified in the 1999 ROD. In fact, at page 6-7 Section 6.2.5.1, it states, "The marking on the containers must always be clearly visible for inspection...". Containerized wastes stored within the SSA were observed to be either improperly labeled or unlabeled. Labels were not adequately affixed to an estimated 25% to 50% of the containers. [see Checklist Table 3, Item 8]. Failure to implement ARARs and final documents approved pursuant to the terms of the FFA/CO represent a violation.*

**RESPONSE:** INEEL agrees that all containers in the SSA must be properly labeled. At the time of the inspection, all the containers were, in fact, properly labeled, clearly visible

for inspection, and no labels were missing, in accordance with the Agency-approved SSA Waste Management Plan (WMP), DOE/ID-10800. Section 6.2.5 identifies labeling requirements for all waste containers in the SSA. Prior to the inspection, INEEL identified that some labels had one or more corners that were not adhering well to the containers. Although labels were in fact present, and compliant with requirements, on all containers at the time of the inspection, the INEEL was in the process of replacing all labels with new laminated labels and using a more effective fixative so the labels would be more resistant to weathering. As discussed with the inspection team during the inspection, not all labels had been replaced with the newer, more weather-resistant labels and fixative. However, the replacement initiative is now complete and all containers are labeled with the new labels.

Additionally, since weather extremes are experienced seasonally at the INEEL, each container is redundantly labeled with an indelible barcode or barcode number and a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) waste label affixed to the container. In the event a label is lost (e.g., due to high winds) a replacement label can be reproduced for each container. Section 6.2.5 of the SSA WMP was revised in September 2002 to reflect this information.

**The second "potential administrative violation" is described as follows:**

*OU 4-12: Paragraph 20.2 of the FFA/CO requires retention and production of records upon request. Landfill inspection reports from 1998 and 1999 were either not retained or not made available to the inspection team, as requested. [see Checklist Table 4, Item 1]. In addition, neutron probe monitoring was not performed in October and November of 1997 for all three landfills, as required under the June 1997 Work Plan. Furthermore, letters documenting scheduled transmittal of quality assured and non-quality assured sampling data were not made available to the inspection team as requested. Time Domain Reflectometry (TDR) monitoring was not performed from October 1997 thru August 1998 at Landfill 2. [see Checklist Table 4, Items 4 & 8]. Although there is more than one failure to perform under this category, this potential violation is considered as an annual aggregate. Paragraph 20.2 of the FFA/CO requires the retention of records for a minimum period of ten (10) years. Failure to retain records represents a potential violation of the terms of the FFA/CO.*

**RESPONSE:** INEEL agrees that it must retain and produce records, upon request, as required by FFA/CO paragraph 20.2. INEEL recognizes that all records requested during the inspection could not be produced. DOE is taking actions to improve the records management system to ensure that records are not lost and to improve location management to ensure rapid production of stored records.

The requested landfill inspection reports identified above, from 1998 and 1999, could not be located. The specific standard identified at Table 4, Item #1, concerns annual Site visits during the first 5 years to monitor the status of efforts. Records are available, however, from the 2000 and 2001 annual Site visits. The requested neutron probe monitoring and TDR monitoring data are not available, in part, because of equipment failures. The EPA Waste Area Group Manager was informed of the equipment failures

when each occurred. In each case, the equipment was repaired as quickly as possible. In addition, steps were taken to prevent the loss of data, in the future, as a result of equipment failures. In the case of the neutron probes, the loss of monitoring data for October and November of 1997 has been attributed to a battery failure on the neutron moisture gauge. The neutron moisture gauge batteries are now checked prior to being used in the field. The standard cited in Table 4, Item #4, concerned verification that neutron probe access tubes (NPAT) were inspected to monitor their condition (e.g., locks, rust, well casing damage, and guard posts). It should be noted that these conditions were acceptable at the time of the 2000 and 2001 Site visits, for which records are available.

INEEL is currently revising the Post-ROD Monitoring Plan and will transmit the document to the Agencies for their review on, or before, February 5, 2003. This revised plan will document the agreement made between the Agencies and DOE-ID regarding the future collection and reporting of NPAT and TDR data collected from the Central Facilities Area (CFA) landfills. The proposed corrective action regarding the submission of these data was that they would be incorporated into the annual monitoring report for Waste Area Group (WAG) 4. A review of the Detailed Work Plan (DWP) prepared for Fiscal Year (FY) 2003 has verified that these activities are included and have been scheduled for completion. The FY-02 Annual CFA Landfill Monitoring Report is currently being prepared and will be submitted to the Agencies for review on, or before, February 14, 2003. In accordance with the agreement, this report and all subsequent annual reports will include the collected NPAT and TDR data. Additionally, this item has been included in the FY-03 DWP and has been added to the DWP Level II Schedule for discussion and tracking during the monthly Environmental Restoration (ER) program reviews.

#### **Responses to Areas of Concern:**

**The first "area of concern" is described as follows:**

*OU 3-13: The potential presence of 'hazardous substances' within "conditional" and/or "nonconditional" waste, generated in the performance of CERCLA remedial activities, is not adequately addressed in managing the CERCLA materials. All items containing CERCLA hazardous substances (not just RCRA hazardous waste) are of concern during CERCLA actions and subject to the Off-Site Rule (see 40 CFR §300.440) if these wastes are shipped off-site. [see Checklist Table 3, Items 5 & 6].*

**RESPONSE:** It is acknowledged that the Off-Site Rule does apply to INEEL CERCLA wastes that are transported off the INEEL. Checklist Table 3, Items 5 and 6, pertain to the generation of wastes during the Tank Farm Interim Action (TFIA). A review of the wastes generated during implementation of the TFIA determined that no CERCLA wastes were transported off the INEEL. As no wastes left the INEEL, the requirements associated with the Off-Site Rule (40 CFR 300.440) were not implemented.

Industrial waste generated during the implementation of CERCLA remediation activities is managed in accordance with applicable CERCLA WMPs and the *INEL Reusable Property, Recyclable Materials, and Waste Acceptance Criteria (RRWAC)*, DOE/ID-10381. The RRWAC provides generators with instructions for waste to be

managed at the INEEL, including the INEEL Landfill Complex. Specifically, industrial waste generated during CERCLA remediation that is identified as having a possibility of containing "hazardous substances" is documented on a Waste Determination and Disposition Form (WDDF), also known as a hazardous waste determination. If, during the WDDF process, the waste is determined to be a hazardous substance, the waste is managed according to any additional requirements, such as Resource Conservation and Recovery Act (RCRA) (listed or characteristic waste), Toxic Substances Control Act (TSCA) (polychlorinated biphenyls [PCBs] or asbestos-contaminated waste), or CERCLA (CERCLA waste with CERCLA WMP and Off-Site suitability determination), as applicable.

The "area of concern" referenced Item 5, Checklist Table 3 of the National Enforcement Investigations Center (NEIC) INEEL FFA/CO Inspection Checklist. Item 5 queried WAG 3 personnel regarding 2 pints of petroleum-contaminated soil from an area outside of the Idaho Nuclear Technology and Engineering Center (INTEC) fence line that was recovered upon discovery of an equipment leak. This equipment was supporting the TFIA activities. Applicable paperwork was completed and the 2 pints of soil were sent to the INEEL Landfill Complex for management/disposal. As this petroleum-contaminated media was managed at the INEEL Landfill Complex, the requirements of 40 CFR 300.440 were not applicable.

The "area of concern" also referenced Item 6, Checklist Table 3 of the NEIC INEEL FFA/CO Inspection Checklist, concerning whether industrial waste was generated as a result of activities within the Tank Farm fence line, and to ensure that these wastes did not come into contact with any liquid INTEC process waste. Within the fenced area of the Tank Farm, some work was performed but not completed to improve drainage to support the *Interim Remedial Action Report for the WAG 3, OU 3-13, Group 1, Tank Farm Interim Action* (DOE/ID-11007). The activities were performed in the fill material that is under laid by a liner that separates the clean fill material from areas of contamination. Construction materials used in the Tank Farm, such as the concrete forms and stakes were placed in this overlying clean fill material. When these materials were removed from the Tank Farm for reuse, a radiological survey was performed and the materials were cleared. As a result, the project did not generate industrial, radiologically contaminated, or mixed wastes during work performed within the fenced area of the Tank Farm. In contrast, the TFIA project generated 147 containers of soil, personal protective equipment, and assorted debris from the drainage improvement activities located approximately 200 feet to the south of the Tank Farm fence line. These wastes were determined to have contacted a previous spill from the INTEC liquid waste system and were assigned the listed waste numbers of F001, F002, F005, and U134. These CERCLA wastes are now in storage at the SSA, a CERCLA waste storage area.

**The second "area of concern" is described as follows:**

*OU 3-13: Procedures and requirements for the safe storage of hazardous substances as specified in the Waste Management Plan for the Staging and Storage Area are insufficiently defined. [see Checklist Table 3, Item 14].*

**RESPONSE:** DOE disagrees with this finding. INEEL has initiated an effort to further refine operating procedures for the SSA. Subsequent to the inspection, the INEEL issued Technical Procedure (TPR) -6834, *CERCLA Staging and Storage Annex (SSA) Operating Procedure*. This procedure directs the operating activities of the SSA. It became effective on March 25, 2002. Additionally, new operating procedures are currently being developed to support the operation of the INEEL CERCLA Disposal Facility (ICDF) Complex, which includes the SSA. TPR-6834 will be superseded by these new operating procedures, once they become effective.

Specifically regarding Checklist Table 3, Item 14, note that Section 4.2.1 of the SSA WMP states, "If waste from within the WAG 3 AOC [Area of Contamination], without analytical information, appears to meet the WAC [Waste Acceptance Criteria], it may be accepted for staging and storage." All waste, without analytical information, has been determined to meet the WAC by means of process knowledge, although additional characterization may be required for these wastes. We realize that the determination of waste exceeding the land disposal restrictions (LDR) 20x rule can be a complex analysis and may require toxicity characteristic leaching procedure (TCLP) analysis. Documentation of basic waste stream information is performed throughout the hazardous waste determination process. Waste generator information is relied upon when starting the hazardous waste determination process. However, this information is looked at to determine if there are any data gaps and these gaps are then filled during the waste profiling process.

**The third "area of concern" is described as follows:**

*OU 3-13: No provisions were observed to prevent windblown dispersion of materials if released as a result of a spill from a failed or damaged container. Such a release of hazardous substances may result in an unacceptable risk to workers, the community or the environment. [see Checklist Table 3, Item 16].*

**RESPONSE:** The applicable or relevant and appropriate requirements (ARARs) of 40 CFR Subpart I (Use and Management of Containers) do not identify requirements to address the wind-blown dispersion of material from a potential spill. While this is not a specific requirement for the SSA, it is acknowledged that it is important to prevent the wind-blown dispersion of material, if released as a result of a spill from a failed or damaged container. The INEEL takes numerous precautions to prevent windblown dispersion of CERCLA remediation wastes—both during excavation activities and waste storage. Precautions taken during waste storage include restrictions on moving containers during periods of high wind (to eliminate potential movement-caused releases); and, in the event of a release, the implementation of the INEEL Emergency Plan/RCRA Contingency Plan (Appendix L20 of PLN-114); and the Spill Prevention, Control, and Countermeasures Plan (Appendix G of PLN-114-2).

**The fourth "area of concern" is described as follows:**

*OU 3-13: The September 2000 Waste Management Plan and applicable or relevant and appropriate requirements (ARARs) established under the Record of Decision, require*

*DOE to conduct inspections of all remedial waste containers in storage and waste liquids in tanks. The procedures demonstrated during the inspection did not allow for an evaluation of container or tank integrity in accordance with applicable ARARs identified in the Record of Decision. [see Checklist Table 3, Items 10 & 17].*

**RESPONSE:** The tanks containing the CERCLA purge waters are in fact being inspected daily pursuant to the substantive requirements of 40 CFR 264.195(b), and no leaks have been observed. Section 6.3.4 of the SSA WMP describes the daily inspection activities that demonstrate compliance with the requirement. These activities are proceduralized in the SSA Inspection Checklist. Please note that the Inspection Checklist was updated in the June 2002 revision of the Waste Management Plan for the Staging and Storage Annex (CPP-1789) (DOE/ID-10800, Rev. 1).

Additionally, the tank inspections are performed in accordance with TPR-6834, *CERCLA Staging and Storage Annex (SSA) Operating Procedure*, on a daily basis, by way of inspecting the primary and secondary containment for leaks, corrosion, deterioration, or other changes in water level from the last inspection. This examination is performed by way of climbing the portable stairs and inspecting the primary tank level and the secondary tank for any possible liquids.

Lastly, Section 6.2.4.1 of the SSA WMP contains provisions to ensure container compatibility for all wastes stored at the SSA. Management Control Procedure (MCP) - 3775, *"Acquisition, Control, and Use of Hazardous Material Packaging,"* and MCP-2669, *"Hazardous Material Shipping,"* are utilized by all waste generators at the INEEL and contain provisions to ensure that compatible containers are utilized for waste packaging prior to shipment.

DOE hopes this information clarifies our position, explains actions taken since the inspection to address these concerns, and brings these issues to a close. In addition, it was noted that several items that were previously listed, *as Potential Violations and Areas of Concern*, in your letter dated July 22, 2002, were not mentioned in the December 9, 2002, Notice of Violation. Since we provided subsequent information on August 22, 2002, for these issues (Potential Violations A, C, and I, along with Areas of Concern A, D, and F), we conclude that our explanations resolved the issues to your satisfaction and that these items are considered closed.

R. Krelzenbeck

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In the future, DOE will be implementing a more aggressive CERCLA program oversight of INEEL compliance with the FFA/CO, to promote continuous improvement. If you should wish to further discuss any of the issues identified in Section II of the December 9, 2002 Notice of Violation, we would be happy to meet with you, or your representatives. In the event you do not concur with our resolutions to the concerns, please contact Ms. Kathleen Hain at (208) 526-4392 to schedule a meeting so that we may better understand your concerns and attempt to find mutually acceptable resolutions to alleviate those concerns.

Sincerely,



Warren E. Bergholz, Jr.  
Acting Manager

Enclosures

cc: C. Stephen Allred, IDEQ  
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R. Card, DOE-HQ, S-2

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**CONCURRENCE:**

OCC \_\_\_\_\_

M \_\_\_\_\_

**RECORD NOTES:**

1. This letter was prepared to transmit the Statement of Dispute to Dispute Resolution Committee under Sections Sections 9.2(c) - (e), and 11.2 of the Federal Facility Agreement and Consent Order (FFA/CO) regarding the Notice of Violation (NOV) for the Tank Farm Soils Interim Action. It also highlights the need to facilitate or mediate the dispute to ensure successful resolution and the continued viability of accelerated cleanup.
2. This letter was prepared by B. R. Bowhan, in coordination with EM (R. Stallman, L. Green, W. Leake, K. Hain, N. Jensen, R. Hall), A. Grose, BBWI, and W. Bergholz.
3. This letter/memo closes OATS number N/A
4. The attached correspondence has no relation to the Naval Nuclear Propulsion Program.

BRBowhan, OCC, Lisa Cripps, 6-0276, December 17, 2002, O:\division\occ\letterlog\02-131.doc